

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 41

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Al Park

AN ACT

**RELATING TO WAGES; PROHIBITING WAGE DISCRIMINATION BASED UPON
GENDER; PROVIDING FOR ENFORCEMENT OF THE PROHIBITION; PROVIDING
PUBLIC AND PRIVATE REMEDIES.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. PROHIBITION AGAINST WAGE DISCRIMINATION BASED
UPON GENDER. --**

**A. An employer shall not pay an employee a wage
rate that is lower than the wage rate paid to an employee of
the opposite gender in the same establishment for equal work on
a job that requires equal skill, effort and responsibility and
that is performed under similar working conditions except where
the payment is made pursuant to the following:**

- (1) a seniority system;**
- (2) a merit system;**

underscored material = new
[bracketed material] = delete

1 (3) a system that measures earnings by
2 quantity or quality of production; or

3 (4) a differential based on a factor other
4 than gender.

5 B. Notwithstanding an agreement to work for a lower
6 wage, an employee receiving less than the wage to which the
7 employee is entitled may recover in a civil action from the
8 employer who violates Subsection A of this section:

9 (1) three times the amount of wages of which
10 the employee has been deprived because of the violation and
11 interest upon the amount from the date of the accrual of
12 damages at the rate for interest set forth in Subsection A of
13 Section 56-8-4 NMSA 1978; and

14 (2) costs of the suit, including reasonable
15 attorney fees.

16 C. The provisions of this section shall be
17 administered and enforced by the human rights division of the
18 labor department. If the division finds that an employer has
19 violated this section, it shall supervise the payment of wages
20 and interest found to be due and unpaid to employees pursuant
21 to Paragraph (1) of Subsection B of this section. Acceptance
22 of full payment from an employer, as approved by the division,
23 shall constitute a waiver by the employee of the cause of
24 action available pursuant to this section.

25 D. An employee may file a complaint with the

underscored material = new
[bracketed material] = del ete

1 division that the wages paid are less than the wages to which
2 the employee is entitled pursuant to this section. The
3 division shall keep confidential the name of an employee who
4 files a complaint regarding an alleged violation of Subsection
5 A of this section until it establishes validity of the
6 complaint or unless it must abridge the confidentiality in
7 order to investigate the complaint. The name of the
8 complaining employee shall remain confidential if the complaint
9 is withdrawn before the confidentiality is abridged by the
10 division. The division shall take the proceedings necessary to
11 enforce the payment of money found to be due and unpaid to the
12 employee.

13 E. Unless otherwise requested by the employee, the
14 division may bring a civil action on behalf of an employee to
15 recover the amount to which the employee is entitled pursuant
16 to Subsection B of this section. An employee shall waive the
17 private cause of action available pursuant to this section if
18 the employee consents to the division bringing the action
19 unless that action is dismissed without prejudice. The
20 employee may intervene in the suit or initiate independent
21 action if the suit has not been determined within one hundred
22 eighty days from the date of filing the complaint.

23 F. A civil action to recover wages pursuant to this
24 section shall not be commenced later than two years after the
25 cause of action occurs. A civil action arising out of a

1 willful violation shall not be commenced later than three years
2 after the cause of action occurs.

3 G. If an employee recovers amounts due the employee
4 pursuant to this section and also files a complaint or brings
5 an action pursuant to 29 U.S.C. 206(d) that results in an
6 additional recovery under federal law for the same violation,
7 the employee shall return to the employer the amount recovered
8 pursuant to this section or the amount recovered under federal
9 law, whichever is less.

10 Section 2. EFFECTIVE DATE. --The effective date of the
11 provisions of this act is July 1, 2003.

12 - 4 -
13
14
15
16
17
18
19
20
21
22
23
24
25